

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Foreign Intelligence Surveillance Act of 1978 Amend-
6 ments Act of 2008” or the “FISA Amendments Act of
7 2008”.

8 (b) TABLE OF CONTENTS.—The table of contents for
9 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

- Sec. 101. Targeting the communications of certain persons outside the United States.
- Sec. 102. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.
- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 104. Applications for court orders.
- Sec. 105. Issuance of an order.
- Sec. 106. Use of information.
- Sec. 107. Amendments for physical searches.
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.
- Sec. 109. Foreign Intelligence Surveillance Court.
- Sec. 110. Review of previous actions.
- Sec. 111. Technical and conforming amendments.

TITLE II—OTHER PROVISIONS

- Sec. 201. Severability.
- Sec. 202. Effective date; repeal; transition procedures.

1 **TITLE I—FOREIGN**
2 **INTELLIGENCE SURVEILLANCE**

3 **SEC. 101. TARGETING THE COMMUNICATIONS OF CERTAIN**
4 **PERSONS OUTSIDE THE UNITED STATES.**

5 (a) IN GENERAL.—The Foreign Intelligence Surveil-
6 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

7 (1) by striking title VII; and

8 (2) by adding after title VI the following new
9 title:

10 **“TITLE VII—ADDITIONAL PROCE-**
11 **DURES FOR TARGETING COM-**
12 **MUNICATIONS OF CERTAIN**
13 **PERSONS OUTSIDE THE**
14 **UNITED STATES**

15 **“SEC. 701. DEFINITIONS.**

16 “In this title:

1 “(1) IN GENERAL.—The terms ‘agent of a for-
2 eign power’, ‘Attorney General’, ‘electronic surveil-
3 lance’, ‘foreign intelligence information’, ‘foreign
4 power’, ‘minimization procedures’, ‘person’, ‘United
5 States’, and ‘United States person’ shall have the
6 meanings given such terms in section 101.

7 “(2) ADDITIONAL DEFINITIONS.—

8 “(A) CONGRESSIONAL INTELLIGENCE COM-
9 MITTEES.—The term ‘congressional intelligence
10 committees’ means—

11 “(i) the Select Committee on Intel-
12 ligence of the Senate; and

13 “(ii) the Permanent Select Committee
14 on Intelligence of the House of Represent-
15 atives.

16 “(B) FOREIGN INTELLIGENCE SURVEIL-
17 LANCE COURT; COURT.—The terms ‘Foreign In-
18 telligence Surveillance Court’ and ‘Court’ mean
19 the court established by section 103(a).

20 “(C) FOREIGN INTELLIGENCE SURVEIL-
21 LANCE COURT OF REVIEW; COURT OF RE-
22 VIEW.—The terms ‘Foreign Intelligence Surveil-
23 lance Court of Review’ and ‘Court of Review’
24 mean the court established by section 103(b).

1 “(D) ELECTRONIC COMMUNICATION SERV-
2 ICE PROVIDER.—The term ‘electronic commu-
3 nication service provider’ means—

4 “(i) a telecommunications carrier, as
5 that term is defined in section 3 of the
6 Communications Act of 1934 (47 U.S.C.
7 153);

8 “(ii) a provider of electronic commu-
9 nications service, as that term is defined in
10 section 2510 of title 18, United States
11 Code;

12 “(iii) a provider of a remote com-
13 puting service, as that term is defined in
14 section 2711 of title 18, United States
15 Code;

16 “(iv) any other communication service
17 provider who has access to wire or elec-
18 tronic communications either as such com-
19 munications are transmitted or as such
20 communications are stored; or

21 “(v) an officer, employee, or agent of
22 an entity described in clause (i), (ii), (iii),
23 or (iv).

24 “(E) ELEMENT OF THE INTELLIGENCE
25 COMMUNITY.—The term ‘element of the intel-

1 ligence community’ means an element of the in-
2 telligence community specified in or designated
3 under section 3(4) of the National Security Act
4 of 1947 (50 U.S.C. 401a(4)).

5 **“SEC. 702. PROCEDURES FOR ACQUIRING THE COMMU-**
6 **NICATIONS OF CERTAIN PERSONS OUTSIDE**
7 **THE UNITED STATES.**

8 “(a) AUTHORIZATION.—Notwithstanding any other
9 provision of law, including title I, the Attorney General
10 and the Director of National Intelligence may authorize
11 jointly, for periods of up to 1 year, the targeting of per-
12 sons reasonably believed to be located outside the United
13 States to acquire foreign intelligence information.

14 “(b) LIMITATIONS.—An acquisition authorized under
15 subsection (a)—

16 “(1) may not intentionally target any person
17 known at the time of acquisition to be located in the
18 United States;

19 “(2) may not intentionally target a person rea-
20 sonably believed to be outside the United States if
21 a significant purpose of such acquisition is to ac-
22 quire the communications of a particular, known
23 person reasonably believed to be located in the
24 United States, except in accordance with title I; and

1 “(3) shall be conducted in a manner consistent
2 with the fourth amendment to the Constitution of
3 the United States.

4 “(c) UNITED STATES PERSONS LOCATED OUTSIDE
5 THE UNITED STATES.—

6 “(1) ACQUISITION INSIDE THE UNITED STATES
7 OF UNITED STATES PERSONS OUTSIDE THE UNITED
8 STATES.—An acquisition authorized under sub-
9 section (a) that occurs inside the United States
10 and—

11 “(A) constitutes electronic surveillance; or

12 “(B) is an acquisition of stored electronic
13 communications or stored electronic data that
14 otherwise requires a court order under this Act,
15 may not intentionally target a United States person
16 reasonably believed to be outside the United States,
17 except in accordance with title I or III. For the pur-
18 poses of an acquisition under this subsection, the
19 term ‘agent of a foreign power’ as used in those ti-
20 tles shall include a person who is an officer of a for-
21 eign power or an employee of a foreign power who
22 is reasonably believed to have access to foreign intel-
23 ligence information.

1 “(2) ACQUISITION OUTSIDE THE UNITED
2 STATES OF UNITED STATES PERSONS OUTSIDE THE
3 UNITED STATES.—

4 “(A) JURISDICTION AND SCOPE.—

5 “(i) JURISDICTION.—The Foreign In-
6 telligence Surveillance Court shall have ju-
7 risdiction to enter an order pursuant to
8 subparagraph (C).

9 “(ii) SCOPE.—No element of the intel-
10 ligence community may intentionally tar-
11 get, for the purpose of acquiring foreign
12 intelligence information, a United States
13 person reasonably believed to be located
14 outside the United States under cir-
15 cumstances in which the targeted United
16 States person has a reasonable expectation
17 of privacy and a warrant would be required
18 if the acquisition were conducted inside the
19 United States for law enforcement pur-
20 poses, unless a judge of the Foreign Intel-
21 ligence Surveillance Court has entered an
22 order or the Attorney General has author-
23 ized an emergency acquisition pursuant to
24 subparagraph (C) or (D) or any other pro-
25 vision of this Act.

1 “(iii) LIMITATIONS.—

2 “(I) MOVING OR MISIDENTIFIED
3 TARGETS.—In the event that the tar-
4 geted United States person is reason-
5 ably believed to be in the United
6 States during the pendency of an
7 order issued pursuant to subpara-
8 graph (C), such acquisition shall cease
9 until authority is obtained pursuant to
10 this Act or the targeted United States
11 person is again reasonably believed to
12 be located outside the United States
13 during the pendency of an order
14 issued pursuant to subparagraph (C).

15 “(II) APPLICABILITY.—If the ac-
16 quisition could be authorized under
17 paragraph (1), the procedures of
18 paragraph (1) shall apply, unless an
19 order or emergency acquisition au-
20 thority has been obtained under a pro-
21 vision of this Act other than under
22 this paragraph.

23 “(B) APPLICATION.—Each application for
24 an order under this paragraph shall be made by
25 a Federal officer in writing upon oath or affir-

mation to a judge having jurisdiction under subparagraph (A)(i). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this paragraph and shall include—

“(i) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

“(ii) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the target of the acquisition is—

“(I) a United States person reasonably believed to be located outside the United States; and

“(II) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

“(iii) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive

1 officers employed in the area of national
2 security or defense and appointed by the
3 President by and with the advice and con-
4 sent of the Senate—

5 “(I) that the certifying official
6 deems the information sought to be
7 foreign intelligence information;

8 “(II) that a significant purpose
9 of the acquisition is to obtain foreign
10 intelligence information;

11 “(III) that designates the type of
12 foreign intelligence information being
13 sought according to the categories de-
14 scribed in section 101(e); and

15 “(IV) that includes a statement
16 of the basis for the certification that
17 the information sought is the type of
18 foreign intelligence information des-
19 ignated;

20 “(iv) a statement of the proposed
21 minimization procedures consistent with
22 the requirements of section 101(h) or sec-
23 tion 301(4);

24 “(v) a statement of the facts con-
25 cerning any previous applications that have

1 been made to any judge of the Foreign In-
2 telligence Surveillance Court involving the
3 United States person specified in the appli-
4 cation and the action taken on each pre-
5 vious application; and

6 “(vi) a statement of the period of time
7 for which the acquisition is required to be
8 maintained, provided that such period of
9 time shall not exceed 90 days per applica-
10 tion.

11 “(C) ORDER.—

12 “(i) FINDINGS.—If, upon an applica-
13 tion made pursuant to subparagraph (B),
14 a judge having jurisdiction under subpara-
15 graph (A)(i) finds that—

16 “(I) on the basis of the facts sub-
17 mitted by the applicant there is prob-
18 able cause to believe that the specified
19 target of the acquisition is—

20 “(aa) a person reasonably
21 believed to be located outside the
22 United States; and

23 “(bb) a foreign power, an
24 agent of a foreign power, or an

1 officer or employee of a foreign
2 power;

3 “(II) the proposed minimization
4 procedures, with respect to their dis-
5 semination provisions, meet the defini-
6 tion of minimization procedures under
7 section 101(h) or section 301(4); and

8 “(III) the certification or certifi-
9 cations required by subparagraph (B)
10 are not clearly erroneous on the basis
11 of the statement made under subpara-
12 graph (B)(iii)(IV),

13 the Court shall issue an ex parte order so
14 stating.

15 “(ii) PROBABLE CAUSE.—In deter-
16 mining whether or not probable cause ex-
17 ists for purposes of an order under clause
18 (i)(I), a judge having jurisdiction under
19 subparagraph (A)(i) may consider past ac-
20 tivities of the target, as well as facts and
21 circumstances relating to current or future
22 activities of the target. However, no United
23 States person may be considered a foreign
24 power, agent of a foreign power, or officer
25 or employee of a foreign power solely upon

1 the basis of activities protected by the first
2 amendment to the Constitution of the
3 United States.

4 “(iii) REVIEW.—

5 “(I) LIMITATIONS ON REVIEW.—

6 Review by a judge having jurisdiction
7 under subparagraph (A)(i) shall be
8 limited to that required to make the
9 findings described in clause (i). The
10 judge shall not have jurisdiction to re-
11 view the means by which an acqui-
12 sition under this paragraph may be
13 conducted.

14 “(II) REVIEW OF PROBABLE

15 CAUSE.—If the judge determines that
16 the facts submitted under subpara-
17 graph (B) are insufficient to establish
18 probable cause to issue an order
19 under this subparagraph, the judge
20 shall enter an order so stating and
21 provide a written statement for the
22 record of the reasons for such deter-
23 mination. The Government may ap-
24 peal an order under this subclause
25 pursuant to subparagraph (E).

1 “(III) REVIEW OF MINIMIZATION
2 PROCEDURES.—If the judge deter-
3 mines that the minimization proce-
4 dures applicable to dissemination of
5 information obtained through an ac-
6 quisition under this subparagraph do
7 not meet the definition of minimiza-
8 tion procedures under section 101(h)
9 or section 301(4), the judge shall
10 enter an order so stating and provide
11 a written statement for the record of
12 the reasons for such determination.
13 The Government may appeal an order
14 under this subclause pursuant to sub-
15 paragraph (E).

16 “(iv) DURATION.—An order under
17 this subparagraph shall be effective for a
18 period not to exceed 90 days and such
19 order may be renewed for additional 90-
20 day periods upon submission of renewal
21 applications meeting the requirements of
22 subparagraph (B).

23 “(D) EMERGENCY AUTHORIZATION.—

24 “(i) AUTHORITY FOR EMERGENCY AU-
25 THORIZATION.—Notwithstanding any other

1 provision in this subsection, if the Attorney
2 General reasonably determines that—

3 “(I) an emergency situation ex-
4 ists with respect to the acquisition of
5 foreign intelligence information for
6 which an order may be obtained under
7 subparagraph (C) before an order
8 under that subsection may, with due
9 diligence, be obtained; and

10 “(II) the factual basis for
11 issuance of an order under this para-
12 graph exists,

13 the Attorney General may authorize the
14 emergency acquisition if a judge having ju-
15 risdiction under subparagraph (A)(i) is in-
16 formed by the Attorney General or a des-
17 ignee of the Attorney General at the time
18 of such authorization that the decision has
19 been made to conduct such acquisition and
20 if an application in accordance with this
21 paragraph is made to a judge of the For-
22 eign Intelligence Surveillance Court as
23 soon as practicable, but not more than 168
24 hours after the Attorney General author-
25 izes such acquisition.

1 “(ii) MINIMIZATION PROCEDURES.—If
2 the Attorney General authorizes such
3 emergency acquisition, the Attorney Gen-
4 eral shall require that the minimization
5 procedures required by this subparagraph
6 be followed.

7 “(iii) TERMINATION OF EMERGENCY
8 AUTHORIZATION.—In the absence of an
9 order under subparagraph (C), the acquisi-
10 tion shall terminate when the information
11 sought is obtained, if the application for
12 the order is denied, or after the expiration
13 of 168 hours from the time of authoriza-
14 tion by the Attorney General, whichever is
15 earliest.

16 “(iv) USE OF INFORMATION.—In the
17 event that such application is denied, or in
18 any other case where the acquisition is ter-
19 minated and no order is issued approving
20 the acquisition, no information obtained or
21 evidence derived from such acquisition, ex-
22 cept under circumstances in which the tar-
23 get of the acquisition is determined not to
24 be a United States person during the
25 pendency of the 168-hour emergency ac-

1 quisition period, shall be received in evi-
2 dence or otherwise disclosed in any trial,
3 hearing, or other proceeding in or before
4 any court, grand jury, department, office,
5 agency, regulatory body, legislative com-
6 mittee, or other authority of the United
7 States, a State, or political subdivision
8 thereof, and no information concerning any
9 United States person acquired from such
10 acquisition shall subsequently be used or
11 disclosed in any other manner by Federal
12 officers or employees without the consent
13 of such person, except with the approval of
14 the Attorney General if the information in-
15 dicates a threat of death or serious bodily
16 harm to any person.

17 “(E) APPEAL.—

18 “(i) APPEAL TO THE COURT OF RE-
19 VIEW.—The Government may file an ap-
20 peal with the Foreign Intelligence Surveil-
21 lance Court of Review for review of an
22 order issued pursuant to subparagraph
23 (C). The Court of Review shall have juris-
24 diction to consider such appeal and shall
25 provide a written statement for the record

1 of the reasons for a decision under this
2 subparagraph.

3 “(ii) CERTIORARI TO THE SUPREME
4 COURT.—The Government may file a peti-
5 tion for a writ of certiorari for review of
6 the decision of the Court of Review issued
7 under clause (i). The record for such re-
8 view shall be transmitted under seal to the
9 Supreme Court of the United States, which
10 shall have jurisdiction to review such deci-
11 sion.

12 “(F) JOINT APPLICATIONS AND ORDERS.—
13 If an acquisition targeting a United States per-
14 son under paragraph (1) or this paragraph is
15 proposed to be conducted both inside and out-
16 side the United States, a judge having jurisdic-
17 tion under subparagraph (A) and section
18 103(a) may issue simultaneously, upon the re-
19 quest of the Government in a joint application
20 complying with the requirements of subpara-
21 graph (B) and section 104 or 303, orders au-
22 thorizing the proposed acquisition under sub-
23 paragraph (B) and section 105 or 304 as appli-
24 cable.

1 “(G) CONCURRENT AUTHORIZATION.—If
2 an order authorizing electronic surveillance or
3 physical search has been obtained under section
4 105 or 304 and that order is in effect, the At-
5 torney General may authorize, during the pend-
6 ency of such order and without an order under
7 this paragraph, an acquisition under this para-
8 graph of foreign intelligence information tar-
9 geting that United States person while such
10 person is reasonably believed to be located out-
11 side the United States. Prior to issuing such an
12 authorization, the Attorney General shall sub-
13 mit dissemination provisions of minimization
14 procedures for such an acquisition to a judge
15 having jurisdiction under subparagraph (A) for
16 approval.

17 “(d) CONDUCT OF ACQUISITION.—An acquisition au-
18 thorized under subsection (a) may be conducted only in
19 accordance with—

20 “(1) a certification made by the Attorney Gen-
21 eral and the Director of National Intelligence pursu-
22 ant to subsection (g); and

23 “(2) the targeting and minimization procedures
24 required pursuant to subsections (e) and (f).

25 “(e) TARGETING PROCEDURES.—

1 “(1) REQUIREMENT TO ADOPT.—The Attorney
2 General, in consultation with the Director of Na-
3 tional Intelligence, shall adopt targeting procedures
4 that are reasonably designed to ensure that any ac-
5 quisition authorized under subsection (a) is limited
6 to targeting persons reasonably believed to be lo-
7 cated outside the United States, and that an appli-
8 cation is filed under title I, if otherwise required,
9 when a significant purpose of an acquisition author-
10 ized under subsection (a) is to acquire the commu-
11 nications of a particular, known person reasonably
12 believed to be located in the United States.

13 “(2) JUDICIAL REVIEW.—The procedures re-
14 ferred to in paragraph (1) shall be subject to judicial
15 review pursuant to subsection (i).

16 “(f) MINIMIZATION PROCEDURES.—

17 “(1) REQUIREMENT TO ADOPT.—The Attorney
18 General, in consultation with the Director of Na-
19 tional Intelligence, shall adopt, consistent with the
20 requirements of section 101(h), minimization proce-
21 dures for acquisitions authorized under subsection
22 (a).

23 “(2) JUDICIAL REVIEW.—The minimization
24 procedures required by this subsection shall be sub-
25 ject to judicial review pursuant to subsection (i).

1 “(g) CERTIFICATION.—

2 “(1) IN GENERAL.—

3 “(A) REQUIREMENT.—Subject to subpara-
4 graph (B), prior to the initiation of an acquisi-
5 tion authorized under subsection (a), the Attor-
6 ney General and the Director of National Intel-
7 ligence shall provide, under oath, a written cer-
8 tification, as described in this subsection.

9 “(B) EXCEPTION.—If the Attorney Gen-
10 eral and the Director of National Intelligence
11 determine that immediate action by the Govern-
12 ment is required and time does not permit the
13 preparation of a certification under this sub-
14 section prior to the initiation of an acquisition,
15 the Attorney General and the Director of Na-
16 tional Intelligence shall prepare such certifi-
17 cation, including such determination, as soon as
18 possible but in no event more than 168 hours
19 after such determination is made.

20 “(2) REQUIREMENTS.—A certification made
21 under this subsection shall—

22 “(A) attest that—

23 “(i) there are reasonable procedures
24 in place for determining that the acquisi-
25 tion authorized under subsection (a) is tar-

1 geted at persons reasonably believed to be
2 located outside the United States and that
3 such procedures have been approved by, or
4 will promptly be submitted for approval by,
5 the Foreign Intelligence Surveillance Court
6 pursuant to subsection (i);

7 “(ii) the procedures referred to in
8 clause (i) are consistent with the require-
9 ments of the fourth amendment to the
10 Constitution of the United States and do
11 not permit the intentional targeting of any
12 person who is known at the time of acqui-
13 sition to be located in the United States;

14 “(iii) the procedures referred to in
15 clause (i) require that an application is
16 filed under title I, if otherwise required,
17 when a significant purpose of an acquisi-
18 tion authorized under subsection (a) is to
19 acquire the communications of a par-
20 ticular, known person reasonably believed
21 to be located in the United States;

22 “(iv) a significant purpose of the ac-
23 quisition is to obtain foreign intelligence
24 information;

1 “(v) the minimization procedures to
2 be used with respect to such acquisition—

3 “(I) meet the definition of mini-
4 mization procedures under section
5 101(h); and

6 “(II) have been approved by, or
7 will promptly be submitted for ap-
8 proval by, the Foreign Intelligence
9 Surveillance Court pursuant to sub-
10 section (i);

11 “(vi) the acquisition involves obtaining
12 the foreign intelligence information from or
13 with the assistance of an electronic com-
14 munication service provider; and

15 “(vii) the acquisition of the contents
16 (as that term is defined in section 2510(8)
17 of title 18, United States Code)) of any
18 communication is limited to communica-
19 tions to which any party is an individual
20 target (which shall not be limited to known
21 or named individuals) who is reasonably
22 believed to be located outside of the United
23 States, and a significant purpose of the ac-
24 quisition of the communications of the tar-

1 get is to obtain foreign intelligence infor-
2 mation; and

3 “(B) be supported, as appropriate, by the
4 affidavit of any appropriate official in the area
5 of national security who is—

6 “(i) appointed by the President, by
7 and with the consent of the Senate; or

8 “(ii) the head of any element of the
9 intelligence community.

10 “(3) LIMITATION.—A certification made under
11 this subsection is not required to identify the specific
12 facilities, places, premises, or property at which the
13 acquisition authorized under subsection (a) will be
14 directed or conducted.

15 “(4) SUBMISSION TO THE COURT.—The Attor-
16 ney General shall transmit a copy of a certification
17 made under this subsection, and any supporting affi-
18 davit, under seal to the Foreign Intelligence Surveil-
19 lance Court as soon as possible, but in no event
20 more than 5 days after such certification is made.
21 Such certification shall be maintained under security
22 measures adopted by the Chief Justice of the United
23 States and the Attorney General, in consultation
24 with the Director of National Intelligence.

1 “(5) REVIEW.—The certification required by
2 this subsection shall be subject to judicial review
3 pursuant to subsection (i).

4 “(h) DIRECTIVES.—

5 “(1) AUTHORITY.—With respect to an acqui-
6 sition authorized under subsection (a), the Attorney
7 General and the Director of National Intelligence
8 may direct, in writing, an electronic communication
9 service provider to—

10 “(A) immediately provide the Government
11 with all information, facilities, or assistance
12 necessary to accomplish the acquisition in a
13 manner that will protect the secrecy of the ac-
14 quisition and produce a minimum of inter-
15 ference with the services that such electronic
16 communication service provider is providing to
17 the target; and

18 “(B) maintain under security procedures
19 approved by the Attorney General and the Di-
20 rector of National Intelligence any records con-
21 cerning the acquisition or the aid furnished that
22 such electronic communication service provider
23 wishes to maintain.

24 “(2) COMPENSATION.—The Government shall
25 compensate, at the prevailing rate, an electronic

1 communication service provider for providing infor-
2 mation, facilities, or assistance pursuant to para-
3 graph (1).

4 “(3) RELEASE FROM LIABILITY.—Notwith-
5 standing any other law, no cause of action shall lie
6 in any court against any electronic communication
7 service provider for providing any information, facili-
8 ties, or assistance in accordance with a directive
9 issued pursuant to paragraph (1).

10 “(4) CHALLENGING OF DIRECTIVES.—

11 “(A) AUTHORITY TO CHALLENGE.—An
12 electronic communication service provider re-
13 ceiving a directive issued pursuant to paragraph
14 (1) may challenge the directive by filing a peti-
15 tion with the Foreign Intelligence Surveillance
16 Court.

17 “(B) ASSIGNMENT.—The presiding judge
18 of the Court shall assign the petition filed
19 under subparagraph (A) to 1 of the judges serv-
20 ing in the pool established by section 103(e)(1)
21 not later than 24 hours after the filing of the
22 petition.

23 “(C) STANDARDS FOR REVIEW.—A judge
24 considering a petition to modify or set aside a
25 directive may grant such petition only if the

1 judge finds that the directive does not meet the
2 requirements of this section or is otherwise un-
3 lawful. If the judge does not modify or set aside
4 the directive, the judge shall immediately affirm
5 such directive, and order the recipient to com-
6 ply with the directive. The judge shall provide
7 a written statement for the record of the rea-
8 sons for a determination under this paragraph.

9 “(D) CONTINUED EFFECT.—Any directive
10 not explicitly modified or set aside under this
11 paragraph shall remain in full effect.

12 “(5) ENFORCEMENT OF DIRECTIVES.—

13 “(A) ORDER TO COMPEL.—In the case of
14 a failure to comply with a directive issued pur-
15 suant to paragraph (1), the Attorney General
16 may file a petition for an order to compel com-
17 pliance with the directive with the Foreign In-
18 telligence Surveillance Court.

19 “(B) ASSIGNMENT.—The presiding judge
20 of the Court shall assign a petition filed under
21 subparagraph (A) to 1 of the judges serving in
22 the pool established by section 103(e)(1) not
23 later than 24 hours after the filing of the peti-
24 tion.

1 “(C) STANDARDS FOR REVIEW.—A judge
2 considering a petition shall issue an order re-
3 quiring the electronic communication service
4 provider to comply with the directive if the
5 judge finds that the directive was issued in ac-
6 cordance with paragraph (1), meets the require-
7 ments of this section, and is otherwise lawful.
8 The judge shall provide a written statement for
9 the record of the reasons for a determination
10 under this paragraph.

11 “(D) CONTEMPT OF COURT.—Failure to
12 obey an order of the Court issued under this
13 paragraph may be punished by the Court as
14 contempt of court.

15 “(E) PROCESS.—Any process under this
16 paragraph may be served in any judicial district
17 in which the electronic communication service
18 provider may be found.

19 “(6) APPEAL.—

20 “(A) APPEAL TO THE COURT OF RE-
21 VIEW.—The Government or an electronic com-
22 munication service provider receiving a directive
23 issued pursuant to paragraph (1) may file a pe-
24 tition with the Foreign Intelligence Surveillance
25 Court of Review for review of the decision

1 issued pursuant to paragraph (4) or (5) not
2 later than 7 days after the issuance of such de-
3 cision. The Court of Review shall have jurisdic-
4 tion to consider such a petition and shall pro-
5 vide a written statement for the record of the
6 reasons for a decision under this paragraph.

7 “(B) CERTIORARI TO THE SUPREME
8 COURT.—The Government or an electronic com-
9 munication service provider receiving a directive
10 issued pursuant to paragraph (1) may file a pe-
11 tition for a writ of certiorari for review of the
12 decision of the Court of Review issued under
13 subparagraph (A). The record for such review
14 shall be transmitted under seal to the Supreme
15 Court of the United States, which shall have ju-
16 risdiction to review such decision.

17 “(i) JUDICIAL REVIEW.—

18 “(1) IN GENERAL.—

19 “(A) REVIEW BY THE FOREIGN INTEL-
20 LIGENCE SURVEILLANCE COURT.—The Foreign
21 Intelligence Surveillance Court shall have juris-
22 diction to review any certification required by
23 subsection (d) or targeting and minimization
24 procedures adopted pursuant to subsections (e)
25 and (f).

1 “(B) SUBMISSION TO THE COURT.—The
2 Attorney General shall submit to the Court any
3 such certification or procedure, or amendment
4 thereto, not later than 5 days after making or
5 amending the certification or adopting or
6 amending the procedures.

7 “(2) CERTIFICATIONS.—The Court shall review
8 a certification provided under subsection (g) to de-
9 termine whether the certification contains all the re-
10 quired elements.

11 “(3) TARGETING PROCEDURES.—The Court
12 shall review the targeting procedures required by
13 subsection (e) to assess whether the procedures are
14 reasonably designed to ensure that the acquisition
15 authorized under subsection (a) is limited to the tar-
16 geting of persons reasonably believed to be located
17 outside the United States, and are reasonably de-
18 signed to ensure that an application is filed under
19 title I, if otherwise required, when a significant pur-
20 pose of an acquisition authorized under subsection
21 (a) is to acquire the communications of a particular,
22 known person reasonably believed to be located in
23 the United States.

24 “(4) MINIMIZATION PROCEDURES.—The Court
25 shall review the minimization procedures required by

1 subsection (f) to assess whether such procedures
2 meet the definition of minimization procedures
3 under section 101(h).

4 “(5) ORDERS.—

5 “(A) APPROVAL.—If the Court finds that
6 a certification required by subsection (g) con-
7 tains all of the required elements and that the
8 targeting and minimization procedures required
9 by subsections (e) and (f) are consistent with
10 the requirements of those subsections and with
11 the fourth amendment to the Constitution of
12 the United States, the Court shall enter an
13 order approving the continued use of the proce-
14 dures for the acquisition authorized under sub-
15 section (a).

16 “(B) CORRECTION OF DEFICIENCIES.—

17 “(i) IN GENERAL.—If the Court finds
18 that a certification required by subsection
19 (g) does not contain all of the required ele-
20 ments, or that the procedures required by
21 subsections (e) and (f) are not consistent
22 with the requirements of those subsections
23 or the fourth amendment to the Constitu-
24 tion of the United States, the Court shall
25 issue an order directing the Government

1 to, at the Government's election and to the
2 extent required by the Court's order—

3 “(I) correct any deficiency identi-
4 fied by the Court's order not later
5 than 30 days after the date the Court
6 issues the order; or

7 “(II) cease the acquisition au-
8 thorized under subsection (a).

9 “(ii) LIMITATION ON USE OF INFOR-
10 MATION.—

11 “(I) IN GENERAL.—Except as
12 provided in subclause (II), no infor-
13 mation obtained or evidence derived
14 from an acquisition under clause (i)(I)
15 concerning any United States person
16 shall be received in evidence or other-
17 wise disclosed in any trial, hearing, or
18 other proceeding in or before any
19 court, grand jury, department, office,
20 agency, regulatory body, legislative
21 committee, or other authority of the
22 United States, a State, or political
23 subdivision thereof, and no informa-
24 tion concerning any United States
25 person acquired from such acquisition

1 shall subsequently be used or dis-
2 closed in any other manner by Fed-
3 eral officers or employees without the
4 consent of such person, except with
5 the approval of the Attorney General
6 if the information indicates a threat
7 of death or serious bodily harm to any
8 person.

9 “(II) EXCEPTION.—If the Gov-
10 ernment corrects any deficiency iden-
11 tified by the Court’s order under
12 clause (i), the Court may permit the
13 use or disclosure of information ac-
14 quired before the date of the correc-
15 tion pursuant to such minimization
16 procedures as the Court shall estab-
17 lish for purposes of this clause.

18 “(C) REQUIREMENT FOR WRITTEN STATE-
19 MENT.—In support of its orders under this sub-
20 section, the Court shall provide, simultaneously
21 with the orders, for the record a written state-
22 ment of its reasons.

23 “(6) APPEAL.—

24 “(A) APPEAL TO THE COURT OF RE-
25 VIEW.—The Government may appeal any order

1 under this section to the Foreign Intelligence
2 Surveillance Court of Review, which shall have
3 jurisdiction to review such order. For any deci-
4 sion affirming, reversing, or modifying an order
5 of the Foreign Intelligence Surveillance Court,
6 the Court of Review shall provide for the record
7 a written statement of its reasons.

8 “(B) CONTINUATION OF ACQUISITION
9 PENDING REHEARING OR APPEAL.—Any acqui-
10 sition affected by an order under paragraph
11 (5)(B) may continue—

12 “(i) during the pendency of any re-
13 hearing of the order by the Court en banc;
14 or

15 “(ii) if the Government appeals an
16 order under this section, until the Court of
17 Review enters an order under subpara-
18 graph (C).

19 “(C) IMPLEMENTATION PENDING AP-
20 PEAL.—Not later than 30 days after the date
21 on which an appeal of an order under para-
22 graph (5)(B) directing the correction of a defi-
23 ciency is filed, the Court of Review shall deter-
24 mine, and enter a corresponding order regard-
25 ing, whether all or any part of the correction

1 order, as issued or modified, shall be imple-
2 mented during the pendency of the appeal.

3 “(D) CERTIORARI TO THE SUPREME
4 COURT.—The Government may file a petition
5 for a writ of certiorari for review of a decision
6 of the Court of Review issued under subpara-
7 graph (A). The record for such review shall be
8 transmitted under seal to the Supreme Court of
9 the United States, which shall have jurisdiction
10 to review such decision.

11 “(7) COMPLIANCE REVIEWS.—During the pe-
12 riod that minimization procedures approved under
13 paragraph (5)(A) are in effect, the Court may review
14 and assess compliance with such procedures by re-
15 viewing the semiannual assessments submitted by
16 the Attorney General and the Director of National
17 Intelligence pursuant to subsection (l)(1) with re-
18 spect to compliance with such procedures. In con-
19 ducting a review under this paragraph, the Court
20 may, to the extent necessary, require the Govern-
21 ment to provide additional information regarding the
22 acquisition, retention, or dissemination of informa-
23 tion concerning United States persons during the
24 course of an acquisition authorized under subsection

1 (a). The Court may fashion remedies it determines
2 necessary to enforce compliance.

3 “(j) JUDICIAL PROCEEDINGS.—Judicial proceedings
4 under this section shall be conducted as expeditiously as
5 possible.

6 “(k) MAINTENANCE OF RECORDS.—

7 “(1) STANDARDS.—A record of a proceeding
8 under this section, including petitions filed, orders
9 granted, and statements of reasons for decision,
10 shall be maintained under security measures adopted
11 by the Chief Justice of the United States, in con-
12 sultation with the Attorney General and the Director
13 of National Intelligence.

14 “(2) FILING AND REVIEW.—All petitions under
15 this section shall be filed under seal. In any pro-
16 ceedings under this section, the court shall, upon re-
17 quest of the Government, review ex parte and in
18 camera any Government submission, or portions of
19 a submission, which may include classified informa-
20 tion.

21 “(3) RETENTION OF RECORDS.—A directive
22 made or an order granted under this section shall be
23 retained for a period of not less than 10 years from
24 the date on which such directive or such order is
25 made.

1 “(l) OVERSIGHT.—

2 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
3 quently than once every 6 months, the Attorney
4 General and Director of National Intelligence shall
5 assess compliance with the targeting and minimiza-
6 tion procedures required by subsections (c), (e), and
7 (f) and shall submit each such assessment to—

8 “(A) the Foreign Intelligence Surveillance
9 Court; and

10 “(B) the congressional intelligence commit-
11 tees.

12 “(2) AGENCY ASSESSMENT.—The Inspectors
13 General of the Department of Justice and of any
14 element of the intelligence community authorized to
15 acquire foreign intelligence information under sub-
16 section (a)—

17 “(A) are authorized to review the compli-
18 ance of their agency or element with the tar-
19 geting and minimization procedures required by
20 subsections (c), (e), and (f);

21 “(B) with respect to acquisitions author-
22 ized under subsection (a), shall review the num-
23 ber of disseminated intelligence reports con-
24 taining a reference to a United States person
25 identity and the number of United States per-

1 son identities subsequently disseminated by the
2 element concerned in response to requests for
3 identities that were not referred to by name or
4 title in the original reporting;

5 “(C) with respect to acquisitions author-
6 ized under subsection (a), shall review the num-
7 ber of targets that were later determined to be
8 located in the United States and an estimate of
9 the number of persons reasonably believed to be
10 located in the United States whose communica-
11 tions were reviewed; and

12 “(D) shall provide each such review to—

13 “(i) the Attorney General;

14 “(ii) the Director of National Intel-
15 ligence; and

16 “(iii) the congressional intelligence
17 committees.

18 “(3) ANNUAL REVIEW.—

19 “(A) REQUIREMENT TO CONDUCT.—The
20 head of an element of the intelligence commu-
21 nity conducting an acquisition authorized under
22 subsection (a) shall direct the element to con-
23 duct an annual review to determine whether
24 there is reason to believe that foreign intel-
25 ligence information has been or will be obtained

1 from the acquisition. The annual review shall
2 provide, with respect to such acquisitions au-
3 thorized under subsection (a)—

4 “(i) an accounting of the number of
5 disseminated intelligence reports con-
6 taining a reference to a United States per-
7 son identity;

8 “(ii) an accounting of the number of
9 United States person identities subse-
10 quently disseminated by that element in re-
11 sponse to requests for identities that were
12 not referred to by name or title in the
13 original reporting; and

14 “(iii) the number of targets that were
15 later determined to be located in the
16 United States and an estimate of the num-
17 ber of persons reasonably believed to be lo-
18 cated in the United States whose commu-
19 nications were reviewed.

20 “(B) USE OF REVIEW.—The head of each
21 element of the intelligence community that con-
22 ducts an annual review under subparagraph (A)
23 shall use each such review to evaluate the ade-
24 quacy of the minimization procedures utilized
25 by such element or the application of the mini-

1 mization procedures to a particular acquisition
2 authorized under subsection (a).

3 “(C) PROVISION OF REVIEW TO FOREIGN
4 INTELLIGENCE SURVEILLANCE COURT.—The
5 head of each element of the intelligence commu-
6 nity that conducts an annual review under sub-
7 paragraph (A) shall provide such review to the
8 Foreign Intelligence Surveillance Court.

9 “(4) REPORTS TO CONGRESS.—

10 “(A) SEMIANNUAL REPORT.—Not less fre-
11 quently than once every 6 months, the Attorney
12 General shall fully inform, in a manner con-
13 sistent with national security, the congressional
14 intelligence committees, the Committee on the
15 Judiciary of the Senate, and the Committee on
16 the Judiciary of the House of Representatives,
17 concerning the implementation of this Act.

18 “(B) CONTENT.—Each report made under
19 subparagraph (A) shall include—

20 “(i) any certifications made under
21 subsection (g) during the reporting period;

22 “(ii) any directives issued under sub-
23 section (h) during the reporting period;

24 “(iii) the judicial review during the re-
25 porting period of any such certifications

1 and targeting and minimization procedures
2 utilized with respect to such acquisition,
3 including a copy of any order or pleading
4 in connection with such review that con-
5 tains a significant legal interpretation of
6 the provisions of this Act;

7 “(iv) any actions taken to challenge or
8 enforce a directive under paragraphs (4) or
9 (5) of subsections (h);

10 “(v) any compliance reviews con-
11 ducted by the Department of Justice or
12 the Office of the Director of National In-
13 telligence of acquisitions authorized under
14 subsection (a);

15 “(vi) a description of any incidents of
16 noncompliance with a directive issued by
17 the Attorney General and the Director of
18 National Intelligence under subsection (h),
19 including—

20 “(I) incidents of noncompliance
21 by an element of the intelligence com-
22 munity with procedures adopted pur-
23 suant to subsections (c), (e), and (f);
24 and

1 “(II) incidents of noncompliance
2 by a specified person to whom the At-
3 torney General and Director of Na-
4 tional Intelligence issued a directive
5 under subsection (h);

6 “(vii) any procedures implementing
7 this section; and

8 “(viii) any annual review conducted
9 pursuant to paragraph (3).

10 **“SEC. 703. USE OF INFORMATION ACQUIRED UNDER SEC-**
11 **TION 702.**

12 “Information acquired from an acquisition conducted
13 under section 702 shall be deemed to be information ac-
14 quired from an electronic surveillance pursuant to title I
15 for purposes of section 106, except for the purposes of
16 subsection (j) of such section.”.

17 (b) TABLE OF CONTENTS.—The table of contents in
18 the first section of the Foreign Intelligence Surveillance
19 Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

20 (1) by striking the item relating to title VII;

21 (2) by striking the item relating to section 701;

22 and

23 (3) by adding at the end the following:

“TITLE VII—ADDITIONAL PROCEDURES FOR TARGETING COMMU-
NICATIONS OF CERTAIN PERSONS OUTSIDE THE UNITED
STATES

“Sec. 701. Definitions.

“Sec. 702. Procedures for acquiring the communications of certain persons outside the United States.

“Sec. 703. Use of information acquired under section 702.”.

1 (c) SUNSET.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by subsections
4 (a)(2) and (b) shall cease to have effect on Decem-
5 ber 31, 2011.

6 (2) CONTINUING APPLICABILITY.—Section
7 702(h)(3) of the Foreign Intelligence Surveillance
8 Act of 1978 (as amended by subsection (a)) shall re-
9 main in effect with respect to any directive issued
10 pursuant to section 702(h) of that Act (as so
11 amended) during the period such directive was in ef-
12 fect. The use of information acquired by an acquisi-
13 tion conducted under section 702 of that Act (as so
14 amended) shall continue to be governed by the provi-
15 sions of section 703 of that Act (as so amended).

16 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
17 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
18 **TION OF CERTAIN COMMUNICATIONS MAY BE**
19 **CONDUCTED.**

20 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
21 the Foreign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1801 et seq.) is amended by adding at the end
23 the following new section:

1 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
2 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
3 TAIN COMMUNICATIONS MAY BE CONDUCTED

4 “SEC. 112. (a) Except as provided in subsection (b),
5 the procedures of chapters 119, 121 and 206 of title 18,
6 United States Code, and this Act shall be the exclusive
7 means by which electronic surveillance and the intercep-
8 tion of domestic wire, oral, or electronic communications
9 may be conducted.

10 “(b) Only an express statutory authorization for elec-
11 tronic surveillance or the interception of domestic, wire,
12 oral, or electronic communications, other than as an
13 amendment to this Act or chapters 119, 121, or 206 of
14 title 18, United States Code, shall constitute an additional
15 exclusive means for the purpose of subsection (a).”.

16 (b) OFFENSE.—Section 109 of the Foreign Intel-
17 ligence Surveillance Act of 1978 (50 U.S.C. 1809) is
18 amended—

19 (1) in subsection (a), by striking “authorized by
20 statute” each place it appears in such section and
21 inserting “authorized by this Act, chapter 119, 121,
22 or 206 of title 18, United States Code, or any ex-
23 press statutory authorization that is an additional
24 exclusive means for conducting electronic surveil-
25 lance under section 112.”; and

1 (2) by adding at the end the following:

2 “(e) DEFINITION.—For the purpose of this section,
3 the term ‘electronic surveillance’ means electronic surveil-
4 lance as defined in section 101(f) of this Act.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) TITLE 18, UNITED STATES CODE.—Section
7 2511(2)(a) of title 18, United States Code, is
8 amended by adding at the end the following:

9 “(iii) If a certification under subpara-
10 graph (ii)(B) for assistance to obtain for-
11 eign intelligence information is based on
12 statutory authority, the certification shall
13 identify the specific statutory provision,
14 and shall certify that the statutory require-
15 ments have been met.”.

16 (2) TABLE OF CONTENTS.—The table of con-
17 tents in the first section of the Foreign Intelligence
18 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
19 is amended by adding after the item relating to sec-
20 tion 111, the following:

“Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of certain communications may be conducted.”.

1 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
2 **ORDERS UNDER THE FOREIGN INTEL-**
3 **LIGENCE SURVEILLANCE ACT OF 1978.**

4 (a) INCLUSION OF CERTAIN ORDERS IN SEMI-AN-
5 NUAL REPORTS OF ATTORNEY GENERAL.—Subsection
6 (a)(5) of section 601 of the Foreign Intelligence Surveil-
7 lance Act of 1978 (50 U.S.C. 1871) is amended by strik-
8 ing “(not including orders)” and inserting “, orders,”.

9 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
10 OTHER ORDERS.—Such section 601 is further amended
11 by adding at the end the following new subsection:

12 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
13 General shall submit to the committees of Congress re-
14 ferred to in subsection (a)—

15 “(1) a copy of any decision, order, or opinion
16 issued by the Foreign Intelligence Surveillance Court
17 or the Foreign Intelligence Surveillance Court of Re-
18 view that includes significant construction or inter-
19 pretation of any provision of this Act, and any
20 pleadings associated with such decision, order, or
21 opinion, not later than 45 days after such decision,
22 order, or opinion is issued; and

23 “(2) a copy of any such decision, order, or opin-
24 ion, and the pleadings associated with such decision,
25 order, or opinion, that was issued during the 5-year
26 period ending on the date of the enactment of the

1 FISA Amendments Act of 2008 and not previously
2 submitted in a report under subsection (a).”.

3 **SEC. 104. APPLICATIONS FOR COURT ORDERS.**

4 Section 104 of the Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1804) is amended—

6 (1) in subsection (a)—

7 (A) by striking paragraphs (2) and (11);

8 (B) by redesignating paragraphs (3)
9 through (10) as paragraphs (2) through (9), re-
10 spectively;

11 (C) in paragraph (5), as redesignated by
12 subparagraph (B) of this paragraph, by striking
13 “detailed”;

14 (D) in paragraph (6), as redesignated by
15 subparagraph (B) of this paragraph, in the
16 matter preceding subparagraph (A)—

17 (i) by striking “Affairs or” and insert-
18 ing “Affairs,”; and

19 (ii) by striking “Senate—” and insert-
20 ing “Senate, or the Deputy Director of the
21 Federal Bureau of Investigation, if the Di-
22 rector of the Federal Bureau of Investiga-
23 tion is unavailable—”;

24 (E) in paragraph (7), as redesignated by
25 subparagraph (B) of this paragraph, by striking

1 “statement of” and inserting “summary state-
2 ment of”;

3 (F) in paragraph (8), as redesignated by
4 subparagraph (B) of this paragraph, by adding
5 “and” at the end; and

6 (G) in paragraph (9), as redesignated by
7 subparagraph (B) of this paragraph, by striking
8 “; and” and inserting a period;

9 (2) by striking subsection (b);

10 (3) by redesignating subsections (c) through (e)
11 as subsections (b) through (d), respectively; and

12 (4) in paragraph (1)(A) of subsection (d), as re-
13 designated by paragraph (3) of this subsection, by
14 striking “or the Director of National Intelligence”
15 and inserting “the Director of National Intelligence,
16 or the Director of the Central Intelligence Agency”.

17 **SEC. 105. ISSUANCE OF AN ORDER.**

18 Section 105 of the Foreign Intelligence Surveillance
19 Act of 1978 (50 U.S.C. 1805) is amended—

20 (1) in subsection (a)—

21 (A) by striking paragraph (1); and

22 (B) by redesignating paragraphs (2)
23 through (5) as paragraphs (1) through (4), re-
24 spectively;

1 (2) in subsection (b), by striking “(a)(3)” and
2 inserting “(a)(2)”;

3 (3) in subsection (c)(1)—

4 (A) in subparagraph (D), by adding “and”
5 at the end;

6 (B) in subparagraph (E), by striking “;
7 and” and inserting a period; and

8 (C) by striking subparagraph (F);

9 (4) by striking subsection (d);

10 (5) by redesignating subsections (e) through (i)
11 as subsections (d) through (h), respectively;

12 (6) by amending subsection (e), as redesignated
13 by paragraph (5) of this section, to read as follows:

14 “(e)(1) Notwithstanding any other provision of this
15 title, the Attorney General may authorize the emergency
16 employment of electronic surveillance if the Attorney Gen-
17 eral—

18 “(A) determines that an emergency situation
19 exists with respect to the employment of electronic
20 surveillance to obtain foreign intelligence informa-
21 tion before an order authorizing such surveillance
22 can with due diligence be obtained;

23 “(B) determines that the factual basis for
24 issuance of an order under this title to approve such
25 electronic surveillance exists;

1 “(C) informs, either personally or through a
2 designee, a judge having jurisdiction under section
3 103 at the time of such authorization that the deci-
4 sion has been made to employ emergency electronic
5 surveillance; and

6 “(D) makes an application in accordance with
7 this title to a judge having jurisdiction under section
8 103 as soon as practicable, but not later than 168
9 hours after the Attorney General authorizes such
10 surveillance.

11 “(2) If the Attorney General authorizes the emer-
12 gency employment of electronic surveillance under para-
13 graph (1), the Attorney General shall require that the
14 minimization procedures required by this title for the
15 issuance of a judicial order be followed.

16 “(3) In the absence of a judicial order approving such
17 electronic surveillance, the surveillance shall terminate
18 when the information sought is obtained, when the appli-
19 cation for the order is denied, or after the expiration of
20 168 hours from the time of authorization by the Attorney
21 General, whichever is earliest.

22 “(4) A denial of the application made under this sub-
23 section may be reviewed as provided in section 103.

24 “(5) In the event that such application for approval
25 is denied, or in any other case where the electronic surveil-

1 lance is terminated and no order is issued approving the
2 surveillance, no information obtained or evidence derived
3 from such surveillance shall be received in evidence or oth-
4 erwise disclosed in any trial, hearing, or other proceeding
5 in or before any court, grand jury, department, office,
6 agency, regulatory body, legislative committee, or other
7 authority of the United States, a State, or political sub-
8 division thereof, and no information concerning any
9 United States person acquired from such surveillance shall
10 subsequently be used or disclosed in any other manner by
11 Federal officers or employees without the consent of such
12 person, except with the approval of the Attorney General
13 if the information indicates a threat of death or serious
14 bodily harm to any person.

15 “(6) The Attorney General shall assess compliance
16 with the requirements of paragraph (5).”; and

17 (7) by adding at the end the following:

18 “(i) In any case in which the Government makes an
19 application to a judge under this title to conduct electronic
20 surveillance involving communications and the judge
21 grants such application, upon the request of the applicant,
22 the judge shall also authorize the installation and use of
23 pen registers and trap and trace devices, and direct the
24 disclosure of the information set forth in section
25 402(d)(2).”.

1 **SEC. 106. USE OF INFORMATION.**

2 Subsection (i) of section 106 of the Foreign Intel-
3 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is
4 amended by striking “radio communication” and inserting
5 “communication”.

6 **SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.**

7 (a) APPLICATIONS.—Section 303 of the Foreign In-
8 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
9 amended—

10 (1) in subsection (a)—

11 (A) by striking paragraph (2);

12 (B) by redesignating paragraphs (3)
13 through (9) as paragraphs (2) through (8), re-
14 spectively;

15 (C) in paragraph (2), as redesignated by
16 subparagraph (B) of this paragraph, by striking
17 “detailed”;

18 (D) in paragraph (3)(C), as redesignated
19 by subparagraph (B) of this paragraph, by in-
20 serting “or is about to be” before “owned”; and

21 (E) in paragraph (6), as redesignated by
22 subparagraph (B) of this paragraph, in the
23 matter preceding subparagraph (A)—

24 (i) by striking “Affairs or” and insert-
25 ing “Affairs,”; and

1 (ii) by striking “Senate—” and insert-
2 ing “Senate, or the Deputy Director of the
3 Federal Bureau of Investigation, if the Di-
4 rector of the Federal Bureau of Investiga-
5 tion is unavailable—”; and

6 (2) in subsection (d)(1)(A), by striking “or the
7 Director of National Intelligence” and inserting “the
8 Director of National Intelligence, or the Director of
9 the Central Intelligence Agency”.

10 (b) ORDERS.—Section 304 of the Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
12 amended—

13 (1) in subsection (a)—

14 (A) by striking paragraph (1); and

15 (B) by redesignating paragraphs (2)
16 through (5) as paragraphs (1) through (4), re-
17 spectively; and

18 (2) by amending subsection (e) to read as fol-
19 lows:

20 “(e)(1) Notwithstanding any other provision of this
21 title, the Attorney General may authorize the emergency
22 employment of a physical search if the Attorney General—

23 “(A) determines that an emergency situation
24 exists with respect to the employment of a physical
25 search to obtain foreign intelligence information be-

1 fore an order authorizing such physical search can
2 with due diligence be obtained;

3 “(B) determines that the factual basis for
4 issuance of an order under this title to approve such
5 physical search exists;

6 “(C) informs, either personally or through a
7 designee, a judge of the Foreign Intelligence Surveil-
8 lance Court at the time of such authorization that
9 the decision has been made to employ an emergency
10 physical search; and

11 “(D) makes an application in accordance with
12 this title to a judge of the Foreign Intelligence Sur-
13 veillance Court as soon as practicable, but not more
14 than 168 hours after the Attorney General author-
15 izes such physical search.

16 “(2) If the Attorney General authorizes the emer-
17 gency employment of a physical search under paragraph
18 (1), the Attorney General shall require that the minimiza-
19 tion procedures required by this title for the issuance of
20 a judicial order be followed.

21 “(3) In the absence of a judicial order approving such
22 physical search, the physical search shall terminate when
23 the information sought is obtained, when the application
24 for the order is denied, or after the expiration of 168

1 hours from the time of authorization by the Attorney Gen-
2 eral, whichever is earliest.

3 “(4) A denial of the application made under this sub-
4 section may be reviewed as provided in section 103.

5 “(5)(A) In the event that such application for ap-
6 proval is denied, or in any other case where the physical
7 search is terminated and no order is issued approving the
8 physical search, no information obtained or evidence de-
9 rived from such physical search shall be received in evi-
10 dence or otherwise disclosed in any trial, hearing, or other
11 proceeding in or before any court, grand jury, department,
12 office, agency, regulatory body, legislative committee, or
13 other authority of the United States, a State, or political
14 subdivision thereof, and no information concerning any
15 United States person acquired from such physical search
16 shall subsequently be used or disclosed in any other man-
17 ner by Federal officers or employees without the consent
18 of such person, except with the approval of the Attorney
19 General if the information indicates a threat of death or
20 serious bodily harm to any person.

21 “(B) The Attorney General shall assess compliance
22 with the requirements of subparagraph (A).”.

23 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
24 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
25 is amended—

1 (1) in section 304(a)(4), as redesignated by
2 subsection (b) of this section, by striking
3 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and
4 (2) in section 305(k)(2), by striking
5 “303(a)(7)” and inserting “303(a)(6)”.

6 SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS
7 AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance
Act of 1978 (50 U.S.C. 1843) is amended—

10 (1) in subsection (a)(2), by striking “48 hours”
11 and inserting “168 hours”; and

(2) in subsection (c)(1)(C), by striking “48
hours” and inserting “168 hours”.

14 SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting “at least” before “seven of the United States judicial circuits”.

20 (b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

25 (A) by inserting “(1)” after “(a)”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(2)(A) The court established under this subsection
4 may, on its own initiative, or upon the request of the Gov-
5 ernment in any proceeding or a party under section 501(f)
6 or paragraph (4) or (5) of section 702(h), hold a hearing
7 or rehearing, en banc, when ordered by a majority of the
8 judges that constitute such court upon a determination
9 that—

10 “(i) en banc consideration is necessary to se-
11 cure or maintain uniformity of the court’s decisions;
12 or

13 “(ii) the proceeding involves a question of ex-
14 ceptional importance.

15 “(B) Any authority granted by this Act to a judge
16 of the court established under this subsection may be exer-
17 cised by the court en banc. When exercising such author-
18 ity, the court en banc shall comply with any requirements
19 of this Act on the exercise of such authority.

20 “(C) For purposes of this paragraph, the court en
21 banc shall consist of all judges who constitute the court
22 established under this subsection.”.

23 (2) CONFORMING AMENDMENTS.—The Foreign
24 Intelligence Surveillance Act of 1978 is further
25 amended—

1 (A) in subsection (a) of section 103, as
2 amended by this subsection, by inserting “(ex-
3 cept when sitting en banc under paragraph
4 (2))” after “no judge designated under this
5 subsection”; and

6 (B) in section 302(c) (50 U.S.C. 1822(c)),
7 by inserting “(except when sitting en banc)”
8 after “except that no judge”.

9 (c) STAY OR MODIFICATION DURING AN APPEAL.—
10 Section 103 of the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1803) is amended—

12 (1) by redesignating subsection (f) as sub-
13 section (g); and

14 (2) by inserting after subsection (e) the fol-
15 lowing new subsection:

16 “(f)(1) A judge of the court established under sub-
17 section (a), the court established under subsection (b) or
18 a judge of that court, or the Supreme Court of the United
19 States or a justice of that court, may, in accordance with
20 the rules of their respective courts, enter a stay of an order
21 or an order modifying an order of the court established
22 under subsection (a) or the court established under sub-
23 section (b) entered under any title of this Act, while the
24 court established under subsection (a) conducts a rehear-
25 ing, while an appeal is pending to the court established

1 under subsection (b), or while a petition of certiorari is
2 pending in the Supreme Court of the United States, or
3 during the pendency of any review by that court.

4 “(2) The authority described in paragraph (1) shall
5 apply to an order entered under any provision of this
6 Act.”.

7 **SEC. 110. REVIEW OF PREVIOUS ACTIONS.**

8 (a) DEFINITIONS.—In this section:

9 (1) APPROPRIATE COMMITTEES OF CON-
10 GRESS.—The term “appropriate committees of Con-
11 gress” means—

12 (A) the Select Committee on Intelligence
13 and the Committee on the Judiciary of the Sen-
14 ate; and

15 (B) the Permanent Select Committee on
16 Intelligence and the Committee on the Judici-
17 ary of the House of Representatives.

18 (2) TERRORIST SURVEILLANCE PROGRAM AND
19 PROGRAM.—The terms “Terrorist Surveillance Pro-
20 gram” and “Program” mean the intelligence activity
21 involving communications that was authorized by the
22 President during the period beginning on September
23 11, 2001, and ending on January 17, 2007.

24 (b) REVIEWS.—

1 (1) REQUIREMENT TO CONDUCT.—The Inspec-
2 tors General of the Office of the Director of Na-
3 tional Intelligence, the Department of Justice, the
4 National Security Agency, and any other element of
5 the intelligence community that participated in the
6 Terrorist Surveillance Program shall work in con-
7 junction to complete a comprehensive review of, with
8 respect to the oversight authority and responsibility
9 of each such Inspector General—

10 (A) all of the facts necessary to describe
11 the establishment, implementation, product, and
12 use of the product of the Program;

13 (B) the procedures and substance of, and
14 access to, the legal reviews of the Program;

15 (C) communications with, and participa-
16 tion of, individuals and entities in the private
17 sector related to the Program;

18 (D) interaction with the Foreign Intel-
19 ligence Surveillance Court and transition to
20 court orders related to the Program; and

21 (E) any other matters identified by such
22 an Inspector General that would enable that In-
23 spector General to report a complete description
24 of the Program, with respect to such element.

1 (2) COOPERATION.—Each Inspector General re-
2 quired to conduct a review under paragraph (1)
3 shall—

4 (A) work in conjunction, to the extent pos-
5 sible, with any other Inspector General required
6 to conduct such a review; and

7 (B) utilize to the extent practicable, and
8 not unnecessarily duplicate or delay, such re-
9 views or audits that have been completed or are
10 being undertaken by such an Inspector General
11 or by any other office of the Executive Branch
12 related to the Program.

13 (c) REPORTS.—

14 (1) PRELIMINARY REPORTS.—Not later than 60
15 days after the date of the enactment of this Act, the
16 Inspectors General of the Office of the Director of
17 National Intelligence and the Department of Justice,
18 in conjunction with any other Inspector General re-
19 quired to conduct a review under subsection (b)(1),
20 shall submit to the appropriate committees of Con-
21 gress an interim report that describes the planned
22 scope of such review.

23 (2) FINAL REPORT.—Not later than 1 year
24 after the date of the enactment of this Act, the In-
25 spectors General required to conduct such a review

1 shall submit to the appropriate committees of Con-
2 gress, to the extent practicable, a comprehensive re-
3 port on such reviews that includes any recommenda-
4 tions of such Inspectors General within the oversight
5 authority and responsibility of such Inspector Gen-
6 eral with respect to the reviews.

7 (3) FORM.—A report submitted under this sub-
8 section shall be submitted in unclassified form, but
9 may include a classified annex. The unclassified re-
10 port shall not disclose the name or identity of any
11 individual or entity of the private sector that partici-
12 pated in the Program or with whom there was com-
13 munication about the Program.

14 (d) RESOURCES.—

15 (1) EXPEDITED SECURITY CLEARANCE.—The
16 Director of National Intelligence shall ensure that
17 the process for the investigation and adjudication of
18 an application by an Inspector General or any ap-
19 propriate staff of an Inspector General for a security
20 clearance necessary for the conduct of the review
21 under subsection (b)(1) is carried out as expedi-
22 tiously as possible.

23 (2) ADDITIONAL LEGAL AND OTHER PER-
24 SONNEL FOR THE INSPECTORS GENERAL.—An In-
25 spector General required to conduct a review under

1 subsection (b)(1) and submit a report under sub-
2 section (c) is authorized to hire such additional legal
3 or other personnel as may be necessary to carry out
4 such review and prepare such report in a prompt
5 and timely manner. Personnel authorized to be hired
6 under this paragraph—

7 (A) shall perform such duties relating to
8 such a review as the relevant Inspector General
9 shall direct; and

10 (B) are in addition to any other personnel
11 authorized by law.

12 **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

13 Section 103(e) of the Foreign Intelligence Surveil-
14 lance Act of 1978 (50 U.S.C. 1803(e)) is amended—

15 (1) in paragraph (1), by striking “105B(h) or
16 501(f)(1)” and inserting “501(f)(1) or 702”; and

17 (2) in paragraph (2), by striking “105B(h) or
18 501(f)(1)” and inserting “501(f)(1) or 702”.

19 **TITLE II—OTHER PROVISIONS**

20 **SEC. 201. SEVERABILITY.**

21 If any provision of this Act, any amendment made
22 by this Act, or the application thereof to any person or
23 circumstances is held invalid, the validity of the remainder
24 of the Act, any such amendments, and of the application

1 of such provisions to other persons and circumstances
2 shall not be affected thereby.

3 **SEC. 202. EFFECTIVE DATE; REPEAL; TRANSITION PROCE-**
4 **DURES.**

5 (a) IN GENERAL.—Except as provided in subsection
6 (c), the amendments made by this Act shall take effect
7 on the date of the enactment of this Act.

8 (b) REPEAL.—

9 (1) IN GENERAL.—Except as provided in sub-
10 section (c), sections 105A, 105B, and 105C of the
11 Foreign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1805a, 1805b, and 1805c) are repealed.

13 (2) TABLE OF CONTENTS.—The table of con-
14 tents in the first section of the Foreign Intelligence
15 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
16 is amended by striking the items relating to sections
17 105A, 105B, and 105C.

18 (c) TRANSITIONS PROCEDURES.—

19 (1) PROTECTION FROM LIABILITY.—Notwith-
20 standing subsection (b)(1), subsection (l) of section
21 105B of the Foreign Intelligence Surveillance Act of
22 1978 shall remain in effect with respect to any di-
23 rectives issued pursuant to such section 105B for in-
24 formation, facilities, or assistance provided during
25 the period such directive was or is in effect.

1 (2) ORDERS IN EFFECT.—

2 (A) ORDERS IN EFFECT ON DATE OF EN-
3 ACTMENT.—Notwithstanding any other provi-
4 sion of this Act or of the Foreign Intelligence
5 Surveillance Act of 1978—

6 (i) any order in effect on the date of
7 enactment of this Act issued pursuant to
8 the Foreign Intelligence Surveillance Act of
9 1978 or section 6(b) of the Protect Amer-
10 ica Act of 2007 (Public Law 110–55; 121
11 Stat. 556) shall remain in effect until the
12 date of expiration of such order; and

13 (ii) at the request of the applicant,
14 the court established under section 103(a)
15 of the Foreign Intelligence Surveillance Act
16 of 1978 (50 U.S.C. 1803(a)) shall reau-
17 thorize such order if the facts and cir-
18 cumstances continue to justify issuance of
19 such order under the provisions of such
20 Act, as in effect on the day before the date
21 of the enactment of the Protect America
22 Act of 2007, except as amended by sec-
23 tions 102, 103, 104, 105, 106, 107, 108,
24 and 109 of this Act.

1 (B) ORDERS IN EFFECT ON DECEMBER 31,
2 2011.—Any order issued under title VII of the
3 Foreign Intelligence Surveillance Act of 1978,
4 as amended by section 101 of this Act, in effect
5 on December 31, 2011, shall continue in effect
6 until the date of the expiration of such order.
7 Any such order shall be governed by the appli-
8 cable provisions of the Foreign Intelligence Sur-
9 veillance Act of 1978, as so amended.

10 (3) AUTHORIZATIONS AND DIRECTIVES IN EF-
11 FECT.—

12 (A) AUTHORIZATIONS AND DIRECTIVES IN
13 EFFECT ON DATE OF ENACTMENT.—Notwith-
14 standing any other provision of this Act or of
15 the Foreign Intelligence Surveillance Act of
16 1978, any authorization or directive in effect on
17 the date of the enactment of this Act issued
18 pursuant to the Protect America Act of 2007,
19 or any amendment made by that Act, shall re-
20 main in effect until the date of expiration of
21 such authorization or directive. Any such au-
22 thorization or directive shall be governed by the
23 applicable provisions of the Protect America Act
24 of 2007 (121 Stat. 552), and the amendment
25 made by that Act, and, except as provided in

1 paragraph (4) of this subsection, any acquisi-
2 tion pursuant to such authorization or directive
3 shall be deemed not to constitute electronic sur-
4 veillance (as that term is defined in section
5 101(f) of the Foreign Intelligence Surveillance
6 Act of 1978 (50 U.S.C. 1801(f)), as construed
7 in accordance with section 105A of the Foreign
8 Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1805a)).

10 (B) AUTHORIZATIONS AND DIRECTIVES IN
11 EFFECT ON DECEMBER 31, 2011.—Any author-
12 ization or directive issued under title VII of the
13 Foreign Intelligence Surveillance Act of 1978,
14 as amended by section 101 of this Act, in effect
15 on December 31, 2011, shall continue in effect
16 until the date of the expiration of such author-
17 ization or directive. Any such authorization or
18 directive shall be governed by the applicable
19 provisions of the Foreign Intelligence Surveil-
20 lance Act of 1978, as so amended.

21 (4) USE OF INFORMATION ACQUIRED UNDER
22 PROTECT AMERICA ACT.—Information acquired from
23 an acquisition conducted under the Protect America
24 Act of 2007, and the amendments made by that Act,
25 shall be deemed to be information acquired from an

1 electronic surveillance pursuant to title I of the For-
2 eign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1801 et seq.) for purposes of section 106 of
4 that Act (50 U.S.C. 1806), except for purposes of
5 subsection (j) of such section.

6 (5) NEW ORDERS.—Notwithstanding any other
7 provision of this Act or of the Foreign Intelligence
8 Surveillance Act of 1978—

9 (A) the government may file an application
10 for an order under the Foreign Intelligence
11 Surveillance Act of 1978, as in effect on the
12 day before the date of the enactment of the
13 Protect America Act of 2007, except as amend-
14 ed by sections 102, 103, 104, 105, 106, 107,
15 108, and 109 of this Act; and

16 (B) the court established under section
17 103(a) of the Foreign Intelligence Surveillance
18 Act of 1978 shall enter an order granting such
19 an application if the application meets the re-
20 quirements of such Act, as in effect on the day
21 before the date of the enactment of the Protect
22 America Act of 2007, except as amended by
23 sections 102, 103, 104, 105, 106, 107, 108,
24 and 109 of this Act.

1 (6) EXTANT AUTHORIZATIONS.—At the request
2 of the applicant, the court established under section
3 103(a) of the Foreign Intelligence Surveillance Act
4 of 1978 shall extinguish any extant authorization to
5 conduct electronic surveillance or physical search en-
6 tered pursuant to such Act.

7 (7) APPLICABLE PROVISIONS.—Any surveillance
8 conducted pursuant to an order entered pursuant to
9 this subsection shall be subject to the provisions of
10 the Foreign Intelligence Surveillance Act of 1978, as
11 in effect on the day before the date of the enactment
12 of the Protect America Act of 2007, except as
13 amended by sections 102, 103, 104, 105, 106, 107,
14 108, and 109 of this Act.